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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	Chapter 11 Case No.: 20-14179 (VPF)
Modell's Sporting Goods, Inc., et al., ¹ Debtors.	Jointly Administered
	Hearing Date: April 30, 2020

**LIMITED OBJECTION OF LANDLORDS HUSA OPERATING CO., LLC
AND DC USA OPERATING CO., LLC TO DEBTORS' REQUEST
FOR EXTENSION OF SUSPENSION OF CHAPTER 11 CASES**

HUSA Management Co. ("HUSA") and DC USA Operating Co., LLC ("DC USA," together with HUSA collectively "Landlords"), by and through their undersigned counsel,

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal tax identification number, as applicable, is as follows: Modell's Sporting Goods, Inc. (9418); Modell's II, Inc. (9422); Modell's NY II, Inc. (9434); Modell's NJ II, Inc. (9438); Modell's PA II, Inc. (9426); Modell's Maryland II, Inc. (9437); Modell's VA II, Inc. (9428); Modell's DE II, Inc. (9423); Modell's DC II, Inc. (9417); Modell's CT II, Inc. (7556); MSG Licensing, Inc. (8971); Modell's NH, Inc. (4219); Modell's Massachusetts, Inc. (6965) and Modell's Online, Inc. (2893). The Debtors' corporate headquarters is located at 498 Seventh Avenue, 20th Floor, New York, New York 10018.

respectfully submit this limited objection to an extension of the suspension of these chapter 11 cases, and in support thereof, respectfully represent as follows:

BACKGROUND

1. The above-captioned debtors (collectively, “Debtors”) filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the “Code”) on March 11, 2020 (the “Petition Date”). The Debtors’ cases are being jointly administered.

2. As of the Petition Date, the Debtor Modell’s II, Inc., as successor tenant, leased certain retail space from HUSA, as successor landlord, pursuant to an unexpired lease of nonresidential real property dated as of January 7, 1998, as amended by First Amendment to Lease dated as of March 31, 1998, as amended by Second Amendment to Lease dated as of January 15, 2015 (collectively, the “HUSA Lease”), located at that certain shopping center commonly known as Harlem U.S.A. at 300 West 125th Street, New York, New York. Certain of the Debtors herein and their non-debtor affiliate Henry Modell & Co., Inc. guaranteed the Debtor’s obligations under the HUSA Lease.

3. As of the Petition Date, the Debtor Modell’s DC II, Inc., as successor tenant, leased certain space from DC USA pursuant to an unexpired lease of nonresidential real property dated as of May 5, 2011 (the “DC USA Lease,” together with the HUSA Lease, the “Leases”) located at that certain shopping center commonly known as DC USA at the northwest corner of 14th Street and Irving Street in Washington, D.C. Certain of the Debtors and their non-debtor affiliate Henry Modell & Co., Inc. guaranteed the Debtor’s obligations under the DC USA Lease.

4. On March 27, 2020, this Court entered that certain Order Temporarily Suspending the Debtors’ Chapter 11 Cases Pursuant to 11 U.S.C. §§105 and 305 (Dkt. No. 166) (the

“Suspension Order”) suspending through and including April 30, 2020 (the “Suspension Period”) all proceedings in these chapter 11 cases and deferring the time for performance of the Debtors’ obligations for the payment of post-petition rent to the Debtors’ landlords.

5. The Court by the Suspension Order fixed April 30, 2020 as the hearing date to consider an extension of the Suspension Period by further order of the Court or alternative orders for relief as the Court deems just. The Court further fixed April 24, 2020 as the deadline for filing objections or alternative orders for relief.

6. On or about April 20, 2020, the Debtors filed that certain Notice of Debtors’ Intent to Seek a Further Suspension of their Chapter 11 Cases through and including May 31, 2020 (Dkt. No. 234), which gives notice of the Debtors’ intent to seek an extension of the Suspension Period through May 31, 2020, without prejudice to the Debtors’ right to seek a further extension of the Suspension Period.

7. As of the Petition Date, the Debtors were in arrears of payment of rent under the Leases prior to March 1, 2020 and failed to pay rent due March 1. The Debtors post-petition have failed to pay rent due April 1, 2020 while the Debtors continue to maintain possession of Landlords’ premises.

OBJECTION

8. HUSA and DC USA hereby object to an extension of the Suspension Period to the extent the Debtors are seeking a further deferment of the time for performance of their obligations for the payment of post-petition rent to landlords. As a court of equity, this Court must consider not only the effect the COVID-19 pandemic may have upon the Debtors but the significant hardship to landlords as a result of the pandemic and the Debtors’ deferment of post-

petition rentals necessary to landlords' survival and avoidance of forfeiture of their properties.

9. Landlords have rightfully relied upon §365(d)(3) of the Code's mandate for the continued payment of rentals to Landlords until assumption or rejection of their leases. Indeed, §365(d)(3) of the Code prohibits the Court from extending, as the Debtors urge the Court to do, the Debtors' time for performance of their obligations to pay rent for more than 60 days after the Petition Date. 11 U.S.C. §365(d)(3). "While the court may extend, for cause, the deadline for payment of rental payments falling due within the sixty-day period, the deadline may not be extended beyond the sixty-day period itself." *In re Dieckhaus Stationers of King of Prussia, Inc.*, 73 B.R. 969, 972 (Bankr. E.D. Pa. 1987)(and cases cited therein); see also *In re Wedtech Corp.*, 72 B.R. 464, 475 (Bankr. S.D.N.Y. 1987)(“it is clear that a court may not authorize a debtor to delay its compliance with § 365(d)(3) beyond the 60-day period.”). Given the Petition Date of May 10, 2020, §365(d)(3) prohibits the Court from extending the Debtors' time to pay rent due May 1, 2020, as well as April 1, 2020, beyond May 10, 2020.

10. Various other landlords have filed objections to an extension of the Suspension Period through May 31, 2020. HUSA and DC USA share the concerns expressed by those other landlords, namely that the Debtors seek to force the landlords of the Debtors' 134 stores, including the Landlords, to involuntarily finance the Debtors' bankruptcy cases through the initial and continued suspension of required monthly rent payments in derogation of 11 U.S.C. §365(d)(3). In order to avoid undue duplication, HUSA and DC USA to the extent not inconsistent herewith, join in and adopt the objections filed herein by such other landlords.

11. Alternatively, to the extent the Court considers an extension of the Suspension Period and further deferment of the time for performance of the Debtors' rental payments under

their leases, HUSA and DC USA respectfully request that the grant of such relief be conditioned upon the Debtors paying into escrow in a segregated account the amount of rent that has and will accrue during the Suspension Period under the Debtors' leases of nonresidential real property, including the Leases, from and after April 1, 2020, plus stub rent for the period from the Petition Date through March 30, 2020.

WHEREFORE, HUSA and DC USA respectfully request that the Court deny the Debtors' request for an extension of the Suspension Period to the extent it seeks a further deferment of the time for performance of their obligations under their leases or alternatively, that the Debtors be required to pay into escrow in a segregated account amounts that have accrued and will accrue during the Suspension Period from and after April 1, 2020, plus stub rent for the period from the Petition Date through March 30, 2020 and grant such other and further relief as the Court deems just and proper.

Dated: April 24, 2020

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